

REMARKS

Reconsideration and further examination of the subject patent application is respectfully requested in view of the RCE submitted herewith and in view of the present Amendment, and the following Remarks. Claims 1-46 are currently pending in the application. Claims 22, 23, and 36 have been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement and failing to provide enablement for a complete communication path and for being indefinite. Claims 1-9 and 16-20 have been rejected under 35 U.S.C. §102(e) and §103(a) as being anticipated by Schulze et al. ("Schulze") (U.S. Pub. No. 2001/0027384) and as being unpatentable over Schulze. Claims 13-15, 21, 23-28, and 32-35 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Schulze in view of U.S. Pat. No. 6,857,072 to Schuster et al. ("Schuster"), and claims 10-12 and 29-31 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Schulze in view of U.S. Pat. No. 6,823,318 to Creswell et al. ("Creswell"). Claims 22, 36-39, 45, and 46 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Schulze in view of Reuss, U.S. Pat. No. 6,364,834; claims 42-44 have been rejected as being unpatentable under 35 U.S.C. §103(a) over Schulze and Reuss in further view of Schuster; and claims 40 and 41 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Schulze, Reuss, and Creswell. Claims 9, 22, 23, and 36 have been amended for clarification. After careful review of the references and the claims, it is believed that the claims are in allowable form and therefore a Notice of Allowance is respectfully requested.

Claims 22, 23 and 36 have been rejected as failing to comply with the written description requirement under 35 U.S.C. §112 first paragraph for claiming "complete communications path"

without support in the original disclosure. Applicant respectfully traverses this rejection. Only claim 22 now claims a “complete communications path.” The Office Action concedes that the specification is enabling for a communication channel between the customer and the ACD and that the specification discusses different networks that could be used. The Office Action however asserts the specification does not describe specific network paths. Such complete paths are shown as well as described throughout the specification. For example, Fig. 1 shows the complete path connecting the customer station 42 thru the PSTN 18 to the ACD 16 which is also described at p. 4, lines 11-14 of the specification. Similarly, a complete communication path from the customer units 28 through the external telephone network to the ACD system 16 is shown in Fig. 2. This is also described in the specification at page 4, lines 19-20, “The multiport switch 26 is coupled, for example, to the PSTN 18 which in turn is connected to customer telephone 28.” Fig. 5 shows the complete path from the cellular phone 88 thru the wireless networks 94 and the PSTN 18 to the ACD 16 as described at p. 9, last paragraph. Fig. 6 shows a complete path from the customer POTS telephone 110 through the PSTN 18 to the ACD 16 wherein voice, and data in the form of DTMF tones, are communicated simultaneously over the dedicated PSTN circuit as described at p. 10, second paragraph. Each of the above examples disclose a path or channel which is complete (i.e., all portions necessary to the communication) and thus the opposite of incomplete (i.e., not enough for communication from the beginning to the end of the channel or path). Clearly, the specification and drawings provide extensive description and illustration of all necessary parts to enable a complete communications path or channel beginning from the customer station, extending through the PSTN, and extending to end

at the ACD as claimed. Thus, the claimed subject matter (i.e., “a complete communications path” or channel extending from the customer station “to the ACD”) is fully disclosed and enabled in the specification, and claims 22, 23 and 36 fully comply with the 35 U.S.C. §112, first paragraph (claim 23 has been amended to remove “complete” and claim 36 does not include “complete”.) Further, the Office Action’s agreement that the specification is enabling for a communication channel between the customer and the ACD further establishes the enabling disclosure of a complete communication path (not an incomplete one) as described above. Claim 36 has also been rejected without explanation for the language “ a communication means...extending from the customer station through the PSTN to the ACD,” and “the customer processing means configured automatically to transmit the encrypted data...to the ACD using only the first two-way communications channel.” As discussed above, this is fully disclosed in the specification. Thus, claims 22, 23, and 36 are believed to now be in compliance with 35 U.S.C. §112.

The Office Action also rejected claims 22 and 23 under 35 U.S.C. §112 second paragraph for being indefinite for use of complete communication path/channel. Claim 23, as amended, does not now recite “complete”. With regard to claim 22, the terms “complete” and “communication path” are common English words (e.g., complete – having all necessary parts, Webster’s New Collegiate Dictionary; path – the physical route a telecommunications signal follows from transmitter to receiver, Newton’s Telecom Dictionary). Thus, the phrase “complete communications path” is clear, and simply means a path (route) of communication extending completely (entirely) from the customer station to the ACD. The term “complete” was inserted

into the claim merely to clarify it is the entire path from end to end that is claimed and as such is clear to one skilled in the art. The Office Action asserts that the specification does not show or describe any specific paths, does not show all necessary parts that would make up the communications path, that the specification is unconcerned with the path, and does not specify the particular paths used. However, the claims do not claim specific paths or particular paths, only that the path or channel is complete from the customer station to the ACD. Further, as described above, complete channels/paths are fully disclosed in the specification. Thus, these claim terms would be clear to one of ordinary skill in the art. Accordingly, withdrawal of the rejections under 35 U.S.C. §112 is respectfully requested.

Claims 1-9 and 16-20 have been rejected as anticipated by Schulze. Independent claims 1, 22, 23, 24 and 36 recite that the communication channel/path that connects the customer and ACD agent begins at the customer station, extends through the PSTN, and ends at the ACD. Further, the claimed first communication process and second communication process are on the same channel between these same two endpoints. Claims 1, 23, and 36 have been amended for clarification including clarification of the channel/path and that the second communication process occurs over the same channel used for the first communication process.

In contrast, Schulze involves two separate communications channels and automatically acquired data. In Schulze, as shown in Fig. 1 and described at paragraph 0047-48, voice traffic is transmitted through the communications channel made up of the combined wireless network 20 and the PSTN 22 to the 911 operator or medical care provider (para. 0048, lines 1-4), but data is transmitted over a different communications channel established thru the network 20 through an

Interworking Function 24 to the Internet 26 for retrieval through the host 30 (para. 0047, lines 1-7). Thus, there are two different communications channels.

The Office Action asserts that Schulze sends data over the cellular network to the host and transmits voice and data over the cellular network. However, no communication path or channel extending from the customer station to the ACD or agent is established in Schulze solely through the cellular network, thus the cellular network cannot be the claimed channel which begins at the customer station and extends to end at the ACD or agent through the PSTN (i.e. in Schulze, the network 20 alone does not form a communication channel which begins at the customer and ends at the ACD). The Office Action also asserts that Schulze shows such a communications channel comprising the PSTN 22, ACD 28, and Wireless network 20.

However, network 20 alone does not form the entire channel, thus network 20 does not form the single channel used for both the first and the second communication process, as claimed. The claims clearly call for a single channel (or path) which begins at the customer station and extends to the ACD which is used for both the first and the second communication process. As described in the cited paragraph 0045, Schulze discloses the data as being transmitted “over a cellular network to the Internet and then to the Host”, and in para. 0044 “Data from the monitoring system are then sent in a wireless mode over a cellular network to the Internet and then to a data analysis center (Host).” Thus, the data is transmitted over a cellular network/IWF/ internet communications channel which is necessarily a different channel than the channel used for voice communication which is a channel established through the cellular system 20 and the PSTN 22. (Para. 0048 “...voice traffic is being transmitted from the patient, a cellular network 20 connects

the public telephone network 22...”). These two different communications channel paths can be seen clearly in Fig. 1, with the voice path from the MVPM 22 through the WN 20 on voice channel 14 through the WN 20 then thru the PSTN 27 to provider 28; and the data path from MVPM 12 through NW 20 through IWF 24 then thru Internet 26 to Host 30. These are clearly different channels to different destinations (with the provider having to subsequently retrieve the data from the Host). Thus, the cellular network of Schulze is not a channel that extends from the customer station to the ACD as claimed. Schulze’s cellular network 20 cannot be the claimed channel as asserted by the Office Action because it does not extend from the customer station and extend to its end at the ACD, it forms only a portion of what corresponds to the claimed channel. As such, Schulze clearly does not teach a communications channel which extends from the customer station to the ACD/agent and which same channel is used for both the first and the second communication process. Schulze clearly uses two different channels not the same channel.

The Office Action also asserts that the voice and data traffic of Schulze goes through only one channel, the network 20. Even if this is true, that channel cannot be the claimed channel because the network 20 alone clearly does not extend from the customer to the ACD or agent. The network 20 (see Fig. 1) extends only to the PSTN22 or the WF24. The claim specifically calls for the entire channel or path over which both voice and data is transmitted to extend from the customer station to the ACD, which Schulze’s cellular network clearly does not do.

The Office Action asserts that Schulze discloses transmission of voice and data over the cellular network 20 to the medical care provider 28, and that the application specification does

not disclose the specific path with which the voice and data travel to the destination. However, Schulze, as discussed above, does not disclose transmission from the customer to the ACD on the same channel as claimed. As discussed above, the entire communication channel or path for voice and data from customer to ACD is shown and described in the specification (see e.g., Fig. 5, p. 9, lines 22-30 and Fig. 6, p. 10, lines 6-18 which shows a POTS telephone 110 connected from the customer to the ACD through a dedicated PSTN circuit to provide for simultaneous voice and data communications through the entire communication path from the customer to the ACD). Therefore, Schulze's use of a different channel or path results in a substantially different system in which data is first stored at the remote host and then later relayed to the medical care provider 28. Thus, independent claims 1, 22-24, and 36 are distinguishable over Schulze, and the combination of Schulze and the other cited references because none of the references discloses the claimed one channel and two different communication processes. Similarly, claims 2-21, 24-35, and 37-45 are distinguishable because they depend from claims 1, 24, and 36.

In addition, Schulze does not concern manually or by hand entered customer data as claimed in claims 1, 22, and 36. The Office Action asserts data transmitted by the MVPMM of Schulze is physiological data about the patient which meets the limitation of customer manually entered data. However, this data is changing real-time biological data which is being automatically acquired by MVPMM with no manual effort by the patent. The term "manually" has a well recognized meaning to one of ordinary skill ("worked or done by hand and not by machine" Webster's New Collegiate Dictionary, 1977). The automatically acquired physiological data of Schulze is the opposite of the manually entered data claimed. The Office

Action asserts that a beating heart is human effort. This is an extreme distortion of the term “manual.” The heart beat is not voluntary and thus not effort (see e.g., “effort” means “conscious exertion of power; serious attempt; produced by exertion or trying.” Webster’s New Collegiate Dictionary, 1977). Further, even if this strained interpretation is accepted, the heart beat is not entering the data, a machine is automatically acquiring the heart beat data and automatically entering it (the heart is passively beating while data is automatically acquired from the heart by a machine and entered). Thus, thus this by the reasoning of the Office Action, the entry of heart data would be automatic entry of “manual” data, not manual entry of data. Further, the MPEP 2111 requires using the broadest reasonable interpretation consistent with the specification as it would be interpreted by one of ordinary skill in the art. The interpretation in the Office Action is not reasonable, not consistent with the specification, nor would one of ordinary skill in the art have such a strained interpretation. Thus, Schulze does not disclose this feature. In addition, the Office Action asserts that Schultz discloses predetermined customer data automatically transmitted to the ACD upon receiving a predetermined signal as claimed because Schulze discloses transmitting the physiological data. However, the physiological data is acquired real-time changing data, which is the opposite of predetermined data (“predetermine” – “to determine beforehand,” Webster’s New Collegiate Dictionary, 1977) and is also not transaction history and preference data (claim 36, e.g., p. 6, last paragraph).

Therefore, independent claims 1, 22, 23, 24 and 36 which claim use of the same channel to the same destination (i.e. the ACD) for both communication processes and predetermined data or transaction history and preference data, and claims 1, 22, 24, and 36, which claim manual

(claims 1, 24, 36) or by hand data (claim 22), are believed to be distinguishable over Schulze. In addition, neither Schuster, Reuss, nor Creswell disclose these features. Thus, independent claims 1, 22, 24 and 36 are believed to be further allowable over any combination of the cited references as are the dependent claims 2-21, 25-35, and 37-46.

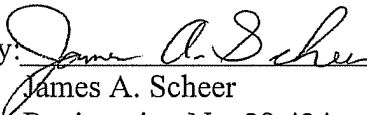
For the foregoing reasons, applicant submits that the subject application is in condition for allowance and earnestly solicits a Notice of Allowance. Should the Examiner be of the opinion that a telephone conference would expedite prosecution of the subject application, the Examiner is respectfully requested to call the undersigned at the below-listed number.

The Commissioner is hereby authorized to charge any additional fee which may be required for this application under 37 C.F.R. §§ 1.16-1.18, including but not limited to an extension of time fee, petition fee, RCE fee, or the issue fee, or credit any overpayment, to Deposit Account No. 23-0920. Should no proper amount be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal, or even

entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 23-0920. A duplicate copy of this sheet(s) is enclosed.

Respectfully submitted,

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